



For a thriving New England

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July 17, 2018

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RECEIVED

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OFFICE OF THE REGIONAL ADMINISTRATOR

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation ("CLF")¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the "Notice") to the addressed persons of CLF's intention to file suit in United States District Court of the District of New Hampshire seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is twofold. First, Del R. Gilbert & Son Block Co., Inc. (hereinafter "Gilbert & Son") and Province Road Properties, LLC (hereinafter "Province Road Properties")

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England's environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Contoocook watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF's membership includes people who live in or near the Merrimack River watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF's members are adversely affected by the Facility's discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.



(hereinafter “the Companies”) are discharging stormwater directly associated with their sand and gravel and concrete facility at located at 427 Province Road, Laconia NH 03246, on both the northeast and southwest sides of Province Road (the “Facility”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, the Companies have failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit (“MSGP”)² adopted by the United States Environmental Protection Agency for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, to the extent that the Companies use water in their industrial processes, the Companies have failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges.

BACKGROUND

The Durkee Brook (Waterbody Segment NHRIV700020201-21) is a tributary of Winnisquam Lake (Waterbody Segment NHLAK700020201-05-02) located in the Merrimack River watershed.³ The Companies discharge into the Durkee Brook. The relevant section of Winnisquam Lake is the Belmont, NH town beach.

EPA has designated the relevant waterbody sections as impaired. Durkee Brook is impaired for fish consumption. The cause of impairment is mercury, and the probable source of the impairment is atmospheric deposition of toxins.⁴ Winnisquam Lake is impaired for aquatic life, fish consumption, and primary contact recreation. The causes of the impairments are cyanobacteria, *Escherichia coli* (*E. coli*), mercury, and pH. The probable sources contributing to the impairment of Winnisquam Lake are atmospheric deposition, pollutants from public bathing areas, and other unknown sources. Winnisquam Lake is subject to three relevant TMDLs: 114 Acid Ponds, the Northeast Regional Mercury TMDL, and the New Hampshire Statewide Bacteria TMDL.⁵

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) (June 5, 2015), https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf [hereinafter MSGP].

³ See *2012 Waterbody Report for Durkee Brook (Segment ID NHRIV700020201-21)*, U.S. ENVTL. PROT. AGENCY (2012), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=NHRIV700020201-21&p_cycle=2012&p_state=NH&p_report_type=; see *2012 Waterbody Report for Town Beach #1 Winnisquam Lake (Segment ID NHLAK700020201-05-02)*, U.S. ENVTL. PROT. AGENCY (2012), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=NHLAK700020201-05-02&p_cycle=2012&p_state=NH&p_report_type=.

⁴ *Id.*

⁵ *Id.*



Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁶ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.⁷ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.⁸

The Companies are required to apply for coverage under a Clean Water Act discharge permit—such as the MSGP—in order to discharge lawfully. Since at least 2013, the Companies have been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.⁹ On June 16, 2015, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

The Companies have failed to obtain coverage under the MSGP or any other valid authorization at any time. Therefore, the Companies are operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The Companies are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Gilbert & Son has operated the Facility since at least 1965 and currently advertises as the operator of the Facility.¹⁰ Province Road Properties, LLC is the owner of the real property on which the Facility operates.¹¹ The Companies and their agents and directors—including but not limited to Brian Gilbert, President, Gilbert & Son and Member, Province Road, Joni L. Gilbert, Member, Province Road, and Jeffrey T. Philpot, Registered Agent, Gilbert & Son and Province Road,¹²—have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

⁶ See 40 C.F.R. § 122.26(b)(13).

⁷ See 40 C.F.R. § 122.26(b)(14).

⁸ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

⁹ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995 and later reissued in 2000, 2008, and 2015. See generally 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015); see also MSGP, *supra* note 2, at pts. 1.1–1.2.

¹⁰ See *Del R. Gilbert & Son Block Co., Inc.*, N.H. DEP’T OF STATE CORP. DIV., <https://quickstart.sos.nh.gov/online/BusinessInquire/BusinessInformation?businessID=18335> (last visited July 16, 2018).

¹¹ See *Province Road Properties LLC*, N.H. DEP’T OF STATE CORP. DIV., <https://quickstart.sos.nh.gov/online/BusinessInquire/BusinessInformation?businessID=586462> (last visited July 16, 2018).

¹² *Supra* note 10; *id.*



LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the sand gravel and concrete products facility located at 427 Province Road, Laconia, NH 03246.

ACTIVITIES ALLEGED TO BE VIOLATIONS

The Companies have engaged, and continue to engage, in activities that fall under SIC codes 3281, 1411, 1422, and 1429 within the meaning of 40 C.F.R. § 122.26(b)(14).¹³ Because the Facility has the primary SIC codes 3281, 1411, 1422, and 1429 and discharges stormwater associated with industrial activity, the Companies are required to apply for coverage, obtain coverage, and comply with the requirements of a NPDES permit such as the MSGP. The Companies have failed to take any of these required steps.

Activities at the Facility include, but are not limited to: cutting, crushing, storing, moving, and processing stone, gravel, crushed stone, and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Stone, gravel, crushed stone, and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the cut stone and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that the Companies use water in their industrial processes, including but not limited to washing gravel and crushed stone and spraying on rock crushing and sorting machinery, that water becomes "process wastewater" (also referred to as "process water") as defined in 40 C.F.R. § 122.2.¹⁴ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Discharges of process wastewater must instead be covered under an individual NPDES permit. CLF intends to pursue claims related to the Companies' unpermitted discharges of process water to waters of the United States.

¹³ See MSGP, *supra* note 2, at appen. D-J2 (specifying that construction sand and gravel facilities identified by the SICs code 1423, 1442 and glass, clay, cement, concrete, and gypsum facilities identified by SIC codes 3271-3275 are subject to the requirements of the MSGP for stormwater discharges).

¹⁴ Defining "Process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."



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STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act ("CWA" or "the Act") prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁵ The Companies discharge stormwater associated with their industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from their Facility into waters of the United States. Because the Companies have not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, they are illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁶ By failing to apply for and comply with the specific requirements of the MSGP, the Companies are in violation of Subsections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), (p)(4)(A), and 40 C.F.R. § 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of 33 U.S.C. § 1311(a). To the extent that the Companies use water in their industrial processes, CLF puts the Companies on notice that CLF intends to pursue claims related to the Companies' unpermitted discharges of process wastewater to waters of the United States.

a. The Companies are discharging stormwater to waters of the United States without a permit.

The Companies are industrial dischargers and their operations fall under SIC Codes of 3281, 1411, 1422, and 1429, which means that pursuant to Section 402(p) of the Act, the Companies are obligated to apply for coverage under the MSGP or obtain other legal authorization. Because the Companies have operated and continue to operate without a permit under Section 402(p), the Companies are in violation of Section 301(a) of the Act.

In addition, during storm events, the Companies' "industrial activities" at their Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from their Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.¹⁷ There have been many such storm events since 2013. The Facility is generating and conveying pollutants from at least the following "point sources": vehicles and equipment left outdoors; vehicles driving on and off the Facility; and channels, ditches, discrete fissures,

¹⁵ 33 U.S.C. § 1311(a).

¹⁶ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; see also MSGP, *supra* note 2, at appen. A (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

¹⁷ See 40 C.F.R. § 122.26(c)(1)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.



containers, and other conveyances to waters of the United States.¹⁸ Durkee Brook and Winnisquam Lake are considered “waters of the United States” as defined in 40 C.F.R. § 122.2, and therefore are “navigable water” as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. The Companies are discharging process water to waters of the United States without a permit.

Wastewater associated with industrial processes, including, but not limited to, washing materials and paved surfaces and spraying machinery, is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Wastewater produced by washing materials and paved surfaces and spraying machinery can contain a variety of pollutants, including detergents, oil, grease, heavy metals, and other pollutants associated with the Facility’s operations. In addition, solids suspended or dissolved in wash water can pollute ground and surface waters. Process wastewater can have severe and long-term impacts on aquatic environments.

Discharges of process water that result from washing materials and paved surfaces and spraying machinery are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. To the extent that the Companies use water in their industrial processes, the Companies do not have an individual NPDES permit authorizing the discharge of process wastewater to waters of the United States. CLF intends to pursue claims related to the Companies’ unpermitted discharges of process water to waters of the United States, namely Durkee Brook.

c. The Companies are violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

The Companies are violating 33 U.S.C. § 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. § 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.¹⁹ The Facility has a primary SIC Codes of 1423, 1442 and 3271-3275 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²⁰ The Companies’ failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402, 33 U.S.C. § 1342(p) of the Clean Water Act.²¹

¹⁸ These discharges constitute “point sources” as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Under 40 C.F.R. § 122.2 and MSGP Appendix A, “discharge of a pollutant” includes “surface runoff which is collected or channeled by man.”

¹⁹ See MSGP, *supra* note 2, at pts. 1.1–1.2.

²⁰ *Id.* at pts. 1.1, 8.E and 8.J.

²¹ A thorough search of EPA’s databases indicates that Gilbert & Son has not filed an NOI for the Facility. See U.S. Env’tl. Prot. Agency, ENF’T & COMPLIANCE HISTORY ONLINE, echo.epa.gov (last visited July 16, 2018).

1) The Companies Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).

As a prerequisite to applying for coverage under the MSGP, the Companies must develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”).²² The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of potential pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²³ The Companies have failed to develop and implement a SWPPP in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

2) The Companies Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, the Companies must submit a complete Notice of Intent (“NOI”) to the EPA.²⁴ To complete the NOI, the Companies are required to determine whether the body of water to which the stormwater discharges is an “impaired” water body, and whether the Facility discharges any specific pollutants listed on the NOI to that water body.²⁵ Durkee Brook (Waterbody Segment NHRIV700020201-21) and Winnisquam Lake (Waterbody Segment NHLAK700020201-05-02) are classified as “impaired waters.”²⁶ Additionally, as part of preparing the NOI, the covered Facility must make certain verifications such as ensuring that no harm is done to a species in violation of the Endangered Species Act.²⁷ The Companies have failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) The Companies Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, the Companies must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. The Companies must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.²⁸ These

²² See MSGP, *supra* note 2, at pt. 5.

²³ *Id.* at pt. 5.2.

²⁴ *Id.* at pt. 1.2.

²⁵ *Id.* at pt. 1.1.4.8. See also *id.* at pt. 2.2.2.

²⁶ See *supra* note 3.

²⁷ See MSGP, *supra* note 2, at pts. 1.1.4.5, 2.3.

²⁸ *Id.* at pt. 2.1.

control practices must be in accordance with good engineering practices and manufacturer's specifications.²⁹ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³⁰ The Companies have failed to cover the materials and operations that may result in polluted stormwater runoff. The Companies have not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4) The Companies Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, the Companies must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³¹ Routine inspections must be conducted at least quarterly but in some instances monthly inspections are required.³² These inspections must occur during normal Facility operating hours.³³ The schedule of these inspections must be included in the Facility's SWPPP and the inspections must be performed by qualified personnel.³⁴ The Companies have failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

5) The Companies Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, the Companies must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁵ The MSGP requires five types of analytical monitoring (one or more of which may apply): quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.³⁶ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.³⁷ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.³⁸ All monitoring data collected under the Permit must be reported to EPA. Furthermore, because Durkee Brook (Waterbody Segment NHRIV700020201-21) and Winnisquam Lake (Waterbody Segment NHLAK700020201-05-02) are "impaired

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at pt. 3.1.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at pt. 6.

³⁶ *Id.* at pt. 6.2.

³⁷ *Id.* at pt. 6.1.1.

³⁸ *Id.* at pt. 6.1.3.



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water” under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), the Companies must monitor for all pollutants for which Durkee Brook or Winnisquam Lake are impaired.³⁹ The Companies have failed to conduct the required monitoring under the MSGP and have failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) The Companies Must Carry Out the Required Reporting and Recordkeeping.

The Companies must maintain and submit any and all required monitoring data.⁴⁰ Such monitoring data includes the following: an annual report to EPA which includes the Facility’s findings from the annual comprehensive site inspection and any documentation of corrective actions;⁴¹ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴² and any other required reports under the MSGP.⁴³ The Companies have failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

7) The Companies Must Comply with the Requirements of MSGP Subpart 8.J

The Companies must also comply with the sector-specific requirements contained in Subpart J of the MSGP.⁴⁴ Subpart J requires construction sand and gravel facilities to implement additional technology-based effluent limits,⁴⁵ meet additional SWPPP and inspection requirements,⁴⁶ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to construction sand and gravel, and dimension and crushed stone and nonmetallic minerals facilities.⁴⁷ The Companies must also minimize contact of stormwater runoff with sand, gravel, stockpiled materials, processed materials and non-recyclable wastes through various control measures such as interceptor or diversion controls (e.g., dikes, swales, curbs, or berms); pipe slope drains; subsurface drains; conveyance systems (e.g., channels or gutters, open-top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts); or their equivalents.⁴⁸ The Companies must also minimize erosion of soil or sediment stockpiles from stormwater and wind using a temporary cover, if feasible.⁴⁹ The Companies have

³⁹ *Id.* at pt. 6.2.4.

⁴⁰ *Id.* at pt. 7.1, 7.2.

⁴¹ *Id.* at pt. 7.5.

⁴² *Id.* at pt. 7.6.

⁴³ *Id.* at pt. 7.7.

⁴⁴ *Id.* at appen. D, Table D-1, Sector J; pt. 8.J.

⁴⁵ *Id.* at pts. 8.J.4–8.J.5.

⁴⁶ *Id.* at pts. 8.J.6–8.J.7.

⁴⁷ *Id.* at pt. 8.J.8.

⁴⁸ *Id.* at pt. 8.J.5.2.

⁴⁹ *Id.* at pt. 8.J.4.1.5.



failed to comply with the requirements of Subpart J of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which the Companies operate their Facility without permit coverage or discharges stormwater and/or process water from the Facility without a permit is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

The Companies have discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2013 on which there has been a measurable precipitation event. Each day on which the Companies operate their Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Every day, since at least 2013, on which the Companies have failed and continue to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Del R. Gilbert & Son Block Co., Inc. and Province Road Properties, LLC are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4, each separate violation of the Act subjects the Companies to a penalty of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; and up to \$53,484 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2018.⁵⁰ CLF will seek the full penalties allowed by law.

⁵⁰ See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



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In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring the Companies to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Caitlin Peale Sloan within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caitlin Peale Sloan', with a long horizontal flourish extending to the right.

Caitlin Peale Sloan, Esq.
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conservation law foundation

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